

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte GEORG ROSSLING  
and ANDREAS SACHSE

Appeal No. 94-2387  
Application 07/815,224<sup>1</sup>

ON BRIEF

MAILED

JUN 14 1996

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Before KIMLIN, TURNER and PAK, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 19 and 21-30, all the claims remaining in the present application.

Claim 19 is illustrative:

<sup>1</sup> Application for patent filed December 31, 1991. According to applicant, the application is a division of Application 07/596,920, filed October 15, 1990.

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19. An aqueous dispersion comprising an aqueous dispersion medium, liposomes, and iopromide encapsulated in said liposomes, wherein said dispersion is prepared by removing an organic solvent from a liquid mixture of an aqueous phase and an organic solvent, said solvent having liposome-forming compounds contained therein, by means of membrane distillation.

The examiner relies upon the following references as evidence of obviousness:

Payne et al. (Payne)                      4,744,989                      May 17, 1988

Sovak, Radiocontrast Agents, "Introduction: State of the Art and Design Principles of Contrast Media", pages 1-21 (1984).

Appellants' claimed invention is directed to an aqueous dispersion of iopromide encapsulated in liposomes. The product dispersion is claimed in product-by-process format. The dispersion is formed by dissolving the iopromide and liposome-forming compounds in an organic solvent and mixing the organic solution with an aqueous phase. The organic solvent is then removed by membrane distillation, leaving liposome-encapsulated iopromide dispersed in the aqueous phase. According to page 2 of the specification herein, it has surprisingly been found that "the particle sizes of the resultant dispersion can be freely selected within wide limits" when membrane distillation is employed rather than the simple distillation of the prior art.

Appealed claims 19 and 21-30 stand rejected under 35 USC 103 as being unpatentable over Payne in view of Sovak.

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